

Assembly Bill No. 432

CHAPTER 53

An act to amend Section 11234 of the Business and Professions Code, relating to real estate.

[Approved by Governor July 12, 2007. Filed with
Secretary of State July 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 432, Garcia. Real estate: time-share plans.

Existing law establishes the Vacation Ownership and Time-Share Act of 2004. The act requires a time-share plan developer, prior to selling, offering, or disposing of a time-share interest in the state, to prepare, for issuance by the Real Estate Commissioner, a public report containing certain disclosures, as specified, or, for a plan located outside of the state, a public report authorized for use by that state containing disclosures substantially equivalent to or greater than those required by California law.

This bill would authorize a developer to submit, upon approval by the commissioner, a public report that combines, in a manner prescribed by the commissioner, the disclosures required by California law and the information required to be disclosed in a public report issued by a regulatory agency in one or more other states.

The people of the State of California do enact as follows:

SECTION 1. Section 11234 of the Business and Professions Code is amended to read:

11234. A developer shall prepare, for issuance by the commissioner, a public report that shall fully and accurately disclose those facts concerning the time-share developer and time-share plan that are required by this chapter or by regulation. The developer shall provide the public report to each purchaser of a time-share interest in a time-share plan at the time of purchase. The public report shall be in writing and dated and shall require the purchaser to certify in writing the receipt thereof. The public report for a single site time-share plan is subject to the requirements of subdivision (a). The public report for a specific time-share interest multisite time-share plan is subject to the requirements of both subdivisions (a) and (b). The public report for a nonspecific time-share interest multisite time-share plan is subject to the requirements of subdivision (c). For time-share plans located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the

commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to this section may be used by the developer to meet the requirements of this section. A developer may, upon approval by the commissioner, submit a public report that combines, in a manner prescribed by the commissioner, the information required to be disclosed by the applicable subdivisions of this section and the information required to be disclosed in a public report issued by a regulatory agency in one or more other states.

(a) Public reports for a single site and those component sites of a specific time-share interest multisite time-share plan that are offered in this state shall include the following:

(1) The name and address of the developer and the type of time-share plan being offered and the name and address of the time-share project.

(2) A description of the existing or proposed accommodations, including the type and number of time-share interests in the accommodations, and if the accommodations are proposed or not yet complete or fully functional, an estimated date of completion.

(3) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the time-share plan, committed to the multisite time-share plan, and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(4) A description of any existing or proposed amenities of the time-share plan and, if the amenities are proposed or not yet complete or fully functional, the estimated date of completion.

(5) The extent to which financial arrangements have been made for the completion of any incomplete, promised improvements.

(6) A description of the duration, phases, and operation of the time-share plan.

(7) The name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(8) The current annual budget as required by Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(9) Any initial or special fee due from the purchaser at closing together with a description of the purpose and the method of calculating the fee.

(10) A description of any financing offered by or available through the developer.

(11) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interests.

(12) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge,

that would have a material effect on the developer's ability to perform its obligations.

(13) Any current or expected fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan.

(14) A description and amount of insurance coverage provided for the protection of the purchaser.

(15) The extent to which a time-share interest may become subject to a tax lien or other lien arising out of claims against purchasers of different time-share interests.

(16) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(17) A statement disclosing that a deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that a deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance, each of which shall be enforceable by the association, in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been obtained, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(18) A statement that the assessments collected from the purchasers will be kept in a segregated account separate from the assessments collected from the purchasers of other time-share plans managed by the same managing entity, along with a statement identifying the location of the account and a disclosure of the rights of owners to inspect the records pertaining to their accounts.

(19) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(20) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

(21) Any other information reasonably requested by the commissioner.

(b) Public reports for specific time-share interest multisite time-share plans shall include the following additional disclosures:

(1) A description of each component site, including the name and address of each component site.

(2) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to each component site of the time-share plan, committed to the multisite time-share plan and available for use by purchasers and a representation

about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(3) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a “full kitchen” means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(4) A description of amenities available for use by the purchaser at each component site.

(5) A description of the reservation system, which shall include the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser’s ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(6) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(7) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(8) A description of the purchaser’s liability for any fees associated with the multisite time-share plan.

(9) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during the 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(10) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(c) Public reports for nonspecific time-share interest multisite time-share plans shall include the following:

(1) The name and address of the developer.

(2) A description of the type of interest and usage rights the purchaser will receive.

(3) A description of the duration and operation of the time-share plan.

(4) A description of the type of insurance coverage provided for each component site.

(5) An explanation of who holds title to the accommodations of each component site.

(6) A description of each component site, including the name and address of each component site.

(7) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the multisite time-share plan for each component site committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(8) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a “full kitchen” means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(9) A description of amenities available for use by the purchaser at each component site.

(10) A description of any incomplete amenities at any of the component sites along with a statement as to any assurance for completion and the estimated date the amenities will be available.

(11) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(12) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(13) A description of the reservation system that shall include all of the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser’s ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(14) A description of any liens, defects, or encumbrances that materially affect the purchaser’s use rights.

(15) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between a multisite time-share plan managing entity and the managing entity of the component sites of a multisite time-share plan, if different from the multisite time-share plan managing entity.

(16) The current annual budget as provided in Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(17) Any current fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan and a statement that the fees or charges are subject to change.

(18) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(19) A description of any financing offered by or available through the developer.

(20) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, which would have a material effect on the developer's ability to perform its obligations.

(21) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(22) A statement disclosing that a deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that a deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been arranged, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(23) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(24) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(d) The commissioner may establish by regulation provisions regarding the delivery of the public report and other required information through alternative media forms.

(e) The commissioner may, upon finding that the subject matter is otherwise adequately covered or the information is unnecessary or inapplicable, waive any requirement set forth in this section.